

SERVICE DATE – JULY 20, 2012

SURFACE TRANSPORTATION BOARD

DECISION AND CERTIFICATE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 102 (Sub-No. 13)

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY—ABANDONMENT—IN ST.
CHARLES, WARREN, MONTGOMERY, CALLAWAY, BOONE, HOWARD, COOPER
AND PETTIS COUNTIES, MO.

Decided: July 19, 2012

The Interstate Commerce Commission (ICC), in a decision served on March 16, 1987, granted Missouri-Kansas-Texas Railroad Company (MKT) authority to abandon a 199.92-mile line of railroad in Missouri between milepost 26.92 at or near Machens, in St. Charles County, and milepost 226.84 at or near Sedalia, in Pettis County. On April 27, 1987, the ICC, at the request of the Missouri Department of Natural Resources (MDNR), issued a Decision and Certificate of Interim Trail Use or Abandonment (CITU) for the entire right-of-way pursuant to § 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d). On June 25, 1987, MKT entered into an interim trail use/rail banking agreement with MDNR.

Under the terms of the interim trail use/rail banking agreement, the 199.92-mile right-of-way was to be conveyed to MDNR by quitclaim deed. However, both section 6 of the agreement and the quitclaim deed expressly excluded the Boonville Lift Bridge (Bridge) from the property to be conveyed to MDNR. The Bridge, which is located near the City of Boonville (City) in Cooper County, Mo., crosses the Missouri River at milepost 191. MDNR subsequently created the Katy Trail State Park out of the conveyed property but routed the trail over the Missouri River via a parallel highway bridge, which was constructed with space reserved for the trail. The Bridge has remained unused with its lift span locked in the raised position, and it is not currently usable even for bicycle and pedestrian traffic.

On May 25, 2005, Union Pacific Railroad Company (UP), as successor to MKT, filed a notice of abandonment consummation with the Board stating that MDNR had agreed to the abandonment of the Bridge and that UP, effective May 25, 2005, was exercising its right under the CITU to fully abandon the Bridge. This action was in response to the United States Coast Guard's repeated demands that UP remove the unused Bridge. UP said it was prepared to remove the Bridge as soon as the Coast Guard and the U. S. Army Corps of Engineers issued the necessary permits. Thereafter, UP developed plans to remove the Bridge and reuse some of its spans to double-track UP's bridge over the Osage River at Osage City, Mo., approximately 65 miles east of Boonville.

On February 12, 2009, the State of Missouri represented by its Attorney General (Missouri) filed a petition for a declaratory order to clarify the status of the Bridge. Missouri

argued that UP did not have Board authority to abandon the Bridge and that UP's purported abandonment consummation was null and void. The Board, in a decision served on July 13, 2010, found that UP had failed to comply with a condition requiring historic review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470 et seq., that the ICC had imposed on its grant of abandonment authority, and that, as a result, the purported abandonment consummation was premature and invalid. Observing that the Bridge was still covered by the CITU and that the Coast Guard had repeatedly demanded its removal, the Board, on its own initiative, vacated the CITU as to the portion of the right-of-way encompassed by the Bridge.

The Board also observed in the July 13 decision that the Coast Guard had filed a letter stating that UP intends to transfer ownership of the Bridge to the City, and that this would suspend the Section 106 Memorandum of Agreement process that was currently in progress for the proposed removal of the Bridge. Because the Bridge would be transferred, rather than demolished or substantially altered, the Board noted that its Section of Environmental Analysis (SEA)¹ would consider whether a "no adverse effect" determination could be made and the Section 106 NHPA process completed. Until that determination has been made, the Section 106 condition will remain in effect.

On May 3, 2012, the City filed a request for issuance of a CITU for the portion of the right-of-way encompassed by the Bridge, between milepost 191.47 at Boonville and milepost 191.16 north of Boonville, in Cooper and Howard Counties, Mo. The City states that after prolonged and successful negotiations with UP and the State of Missouri, a settlement agreement was entered into for the Missouri Department of Transportation (MoDOT) to provide financial support for the construction of a new bridge over the Osage River, which would be used by UP, public vehicles, and pedestrians. The settlement agreement further provides that upon commencement of construction of the new bridge and issuance of a CITU, UP will convey the Bridge and related rail property to the City in accordance with, and subject to, § (8)(d).

The City states that it is filing this CITU request because construction of the new bridge has commenced and the State Historic Preservation Office for Missouri has both issued a letter in support of interim trail rail use/rail banking, as contemplated by the settlement agreement, and determined that this use would create no adverse impact on historic resources. By letter filed on May 7, 2012, UP states that it concurs with the City's request and desires to convey the Bridge to the City.

The City has submitted a statement of its willingness to assume financial responsibility for the portion of the right-of-way between milepost 191.47 and milepost 191.16 and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reactivation for rail service, as required by 49 C.F.R. § 1152.29.

Because the City's request complies with the requirements of 49 C.F.R. § 1152.29 and UP is willing to negotiate for trail use, a CITU will be issued. The parties may negotiate an agreement for the portion of the line between milepost 191.47 and milepost 191.16 during the

¹ Now the Office of Environmental Analysis (OEA).

180-day period prescribed below.² If an interim trail use agreement is reached (and thus interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29 (c)(2) and (h).³ If no agreement is reached within 180 days, UP may fully abandon that portion of the line. See 49 C.F.R. § 1152.29 (c)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The request for a CITU, under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 for the portion of the line between milepost 191.47 and milepost 191.16 is granted.
3. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
4. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities described in ordering paragraph 3 above.
5. If an interim trail use agreement is reached (and thus interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(c)(2) and (h).
6. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and certificate and request that it be vacated on a specified date.
7. If an agreement for interim trail use/rail banking is reached by January 16, 2013 for that portion of the line between mileposts 191.47 and 191.16, interim trail use may be implemented. If no agreement is reached, UP may fully abandon the line.

² The Board's rules generally provide for a 180-day period for parties to negotiate a railbanking agreement. See 49 C.F.R. § 1152.29 (c)(1).

³ National Trails System Act and Railroad Rights-of-Way, EP 702 (STB served Apr. 30, 2012). Final rule effective May 30, 2012.

8. This decision and certificate is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.